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PTO/SB/31 (04-07)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

APPEAL BRIEF ~~NOTICE OF APPEAL~~ FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Docket Number (Optional)

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on July 25, 2007
Signature Bruce A. Lev
Typed or printed name Bruce A. Lev

In re Application of Eric John Ganoraf
Application Number 10/716,853 | Filed 11/20/2003
For Phillip A. Gray
Art Unit 3767 | Examiner Phillip A. Gray

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this ~~Notice of Appeal is~~ * Appeal Brief * (37 CFR 41.20(b)(1)) $ 250.00

- [x] Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: $ 250.00
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I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 58,594
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

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July 25, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [x] *Total of 3 forms are submitted.

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PTO/SB/21 (04-07)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/716,853
Filing Date	11/20/2003
First Named Inventor	Eric John GANDRAS
Art Unit	3767
Examiner Name	Phillip A. GRAY
Attorney Docket Number	EG1

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
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- ☑ Other Enclosure(s) (please Identify below):
  - Appeal Brief Fee Calc sheet
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Remarks

APPEAL BRIEF TRANSMITTED & FEE

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Fitzpatrick, Cella, Harper & Scinto		
Signature	Bruce A. Lev		
Printed name	Bruce A. LEV		
Date	July 25, 2007	Reg. No.	58,594

CERTIFICATE OF TRANSMISSION/MAILING

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Signature	Bruce A. Lev		
Typed or printed name	Bruce A. LEV	Date	July 25, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.	:	10/716,853
Applicant	:	Eric J. Gandras
Filed	:	November 20, 2003
Title	:	Pelvic Arterial Catheter
TC/A.U.	:	3767
Examiner	:	Phillip A. Gray
Atty. Doc. No.	:	EG1

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is in furtherance of the Notice of Appeal filed in this case on July 6, 2007. The fees required under §41.20 are dealt with in the accompanying Transmittal of Appeal Brief.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the Applicant, Eric J. Gandras.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-31, 33-44, 46-57, and 59-64 are pending.

Originally filed claims 1, 39, and 52 were amended, and claims 32, 45, and 58 were canceled in an Office Action response dated January 19, 2007.

Claims 1-31, 33-44, 46-57, and 59-64 presently stand rejected under 35 U.S.C. § 102. The Applicant appeals the rejection of all the pending claims.

IV. STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the final Office Action issued on April 19, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This invention, as applied to independent claim 1, is concisely explained as a pelvic arterial catheter 100, as seen in Figs. 1 and 2, and discussed in paragraph 0014, that is ideal for catheterization of the bilateral pelvic arteries from a unilateral puncture site, which falls within the medical classification of pelvic angiographic procedures. The catheter 100 comprises a primary curve 104, a first tapered section 102, a secondary curve 105, and a second tapered section (inclusive of the section just beyond the secondary curve 105 and also member 103), and wherein the second tapered section has at least one curve (as illustrated by member 103).

The second independent claim 39, is drawn to a catheter including a tapered end section (such as illustrated by member 103) having at least one curve.

The third (and final) independent claim 52, is drawn to an end section for a catheter, wherein the end section has at least one curve (again illustrated by member 103).

All the remaining dependent claims are drawn to more specific structural specifications and material variations.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-31, 33-44, 46-57, and 59-64 stand rejected under 35 U.S.C § 102 as being unpatentable over US Patent No. 6,030,369 to Engelson et al (hereinafter "Engelson").

VII. ARGUMENTS

All the pending claims rise or fall with the position that the reference of Engelson does not show or disclose a tapered section incorporating/having a "curve", let alone an "end section" having a tapered section including a curve. The ultimate combination of a "tapered" member including a "curve" within a medical catheter is no where to be found within the reference of Engelson.

Engelson does NOT incorporate a "curve" within his end/tip section (member # 102, best illustrated in Figure 1) as is disclosed within the instant application and claims (illustrated as section/member #103). Therefore, the reference of Engelson does not set forth each and every element within the three independent claims 1, 39, and 52 (i.e., claim 1, "wherein the second tapered section has at least one curve"). Therefore, the current 35 U.S.C § 102 rejections are inappropriate and should be reversed.

> "An anticipating reference must fully disclose
> each and every element of the claimed invention, arranged as in the claim."
> See Lindemnn Masch.GmbH v. American Hoist & Derrick Co.,
> 730 F.2d 1452 (Fed. Cir. 1984).

"A claim is anticipated only if each and every element
as set forth in the claim is found, either expressly or inherently
described, in a single prior art reference."
Verdegaal Bros. v. Union Oil Co. of California,
814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"A claim is anticipated only if the prior art reference discloses
every element of the asserted invention.
See Lewmar Marine Inc. v. Barient, Inc.,
827 F.2d 744, 747 (1987), cert. denied, 484 U.S. 1007 (1988).

See also MPEP § 2131.02.<
"The identical invention must be shown in as complete detail
as is contained in the ... claim."
Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236,
9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The reason why the curve in the end section of the instant invention is so important is that it facilitates catheterization of the bilateral uterine arteries (or any other pelvic arterial branch) while minimizing trauma and damage to the arteries. Trauma to these vessels can lead to an adverse clinical event and/or prevent completion of an important endovascular therapy. The unique and distinct anatomy and physiology of the uterine arteries are what initially resulted in the idea for the invention. The primary and secondary curves (Figure 1, sections 104 and 105) allow bringing the catheter tip into proximity to the preferred artery. The distal tip of the catheter (Figures 1 and 2, section 103) requires at least one curve in order to allow catheterization of the uterine arteries as they frequently arise at a very acute angle from the anterior division of the internal iliac artery.

One catheterizes an artery most safely over a guide wire to minimize trauma, as the hollow end of a catheter can cause dissection easily (i.e. the lifting of the intima, or lining, of the artery). When one relies solely on the guide wire to catheterize a uterine artery it may

not be sufficient because of the anatomic angle from which the origin of the artery arises and may result in vessel damage (dissection and/or perforation and/or spasm) as a result of passing the wire over the origin of the artery numerous times without successful engagement, or the wire will engage the artery but not allow the catheter to track over it.

The tip of Engelson's invention, section 102, lacks a curve and thus will not perform adequately when compared to the instant invention as it would rely solely upon the guide wire to catheterize the blood vessel, not the shape of the tip of the catheter.
This would allow increased traumatic forces to be applied to the artery as there is no inhibiting curve to reduce the force from the guide wire leaving the catheter and engaging the surface of the artery.

The curve in my invention not only allows catheterization but it will reduce the force of the guide wire leaving the tip of the catheter and thus minimize damage to the blood vessel. This is a distinct mechanical advantage over Engelson.

VIII. APPENDIX OF CLAIMS

The text of the claims involved in the appeal are:

1. A catheter for use in pelvic angiographic procedures comprising: a primary curve; a first tapered section; a secondary curve; and a second tapered section; and wherein the second tapered section has at least one curve.

2. The catheter of claim 1 formed from a group of plastics that includes polyurethane, polyethylene and polyether block amide copolymer.

3. The catheter of claim 1, wherein the second tapered section tapers from an inner diameter of 0.035 inches to 0.018 inches, and wherein the outer diameter tapers from 4 french to 3 french.

4. The catheter of claim 1, wherein the overall length of the catheter is between 76 cm and 87 cm.

5. The catheter of claim 1, wherein the length from the primary curve to the secondary curve is between 14 cm and 17 cm.

6. The catheter of claim 1, wherein the length from the secondary curve to the catheter tip is between 3 cm and 8 cm.

7. The catheter of claim 1, wherein the start of the first tapered section begins between 2.0 cm and 3.0 cm beyond the primary curve, and wherein the taper is from an inner diameter of 0.038 inches to 0.035 inches and an outer diameter of 5 french to 4 french.

8. The catheter of claim 1, wherein the start of the second tapered section begins between 0.5 cm and 1.5 cm from the secondary curve.

9. The catheter of claim 1, wherein the overall length of the second tapered section is between 2.0 cm and 8.0 cm.

10. The catheter of claim 1, wherein the radius of the primary curve is between 1.0 cm and 1.2 cm, and wherein the angle of said primary curve is within a range between 180 and 420 degrees.

11. The catheter of claim 10, wherein the angle of said primary curve is 360 degrees.

12. The catheter of claim 1, wherein the angle of the secondary curve is between 90 and 100 degrees from the shaft.

13. The catheter of claim 1, wherein the catheter is formed from a braided material.

14. The catheter of claim 13, wherein the braided material is from a group that includes stainless steel.

15. The catheter of claim 1, wherein the catheter is impregnated with a radioopaque material.

16. The catheter of claim 15, wherein the radioopaque material is from a group that includes tungsten.

17. The catheter of claim 1, wherein the first tapered portion is made from a group of materials that include a polyether block amide copolymer.

18. The catheter of claim 1, wherein a hydrophilic coating is employed.

19. The catheter of claim 18, wherein the hydrophilic coating coats at least a portion of the catheter from the origin of the first tapered section to the tip.

20. The catheter of claim 1, including a hub at its origin.

21. The catheter of claim 20, wherein the length from the origin of the hub to the primary curve is between 59 cm and 62 cm.

22. The catheter of claim 20, wherein the hub is 1.0 to 2.0 cm in length and has an inner luminal diameter of 0.038 inches.

23. The catheter of claim 20, wherein the hub consists of polyurethane.

24. The catheter of claim 20, wherein the hub has an inner luminal diameter of 0.038 inches.

25. The catheter of claim 1 or 20, wherein a straightener extends on the outside of the catheter over a length between 2.0 cm and 3.0 cm.

26. The catheter of claim 25, wherein the straightener is made of polyurethane.

27. The catheter of claim 25, wherein the straightener is removeable.

28. The catheter of claim 1 or 20, wherein the second tapered section is formed from a flexible material.

29. The catheter of claim 1 or 20, wherein the second tapered section is formed from an elastic material.

30. The catheter of claim 1 or 20, wherein the second tapered section is formed from a soft material.

31. The catheter of claim 1 or 20, wherein the second tapered section is formed from a germ-retarding material.

33. The catheter of claim 1 or 20, wherein the thickness of the walls of the second tapered section changes along its length.

34. The catheter of claim 1 or 20, wherein the length of the second tapered section is at least 0.5 cm.

35. The catheter of claim 1 or 20, wherein the length of the second tapered section is variable.

36. The catheter of claim 1 or 20, wherein the second tapered section is detachable.

37. The catheter of claim 1 or 20, wherein the second tapered section is formed separately from the rest of the catheter.

38. The catheter of claim 1 or 20, wherein the second tapered section is formed separately from the rest of the catheter and includes attachment means for removably attaching to the secondary curve.

39. A catheter including a tapered end section; wherein the tapered section has at least one curve.

40. The catheter of claim 39, wherein the tapered end section is formed from a flexible material.

41. The catheter of claim 39, wherein the tapered end section is formed from an elastic material.

42. The catheter of claim 39, wherein the tapered end section is formed from a soft material.

43. The catheter of claim 39, wherein the tapered end section is formed from a germ-retarding material.

44. The catheter of claim 39, wherein the tapered end section is formed from a braided material.

46. The catheter of claim 39, wherein the thickness of the walls of the tapered end section changes along its length.

47. The catheter of claim 39, wherein the length of the tapered end section is at least 0.5 cm.

48. The catheter of claim 39, wherein the length of the tapered end section is variable.

49. The catheter of claim 39, wherein the tapered end section is detachable.

50. The catheter of claim 39, wherein the tapered end section includes attachment means for removably attaching to a tip of the catheter.

51. The catheter of claim 39, wherein the tapered end section tapers from an inner diameter of 0.035 inches to 0.018 inches, and wherein the outer diameter tapers from 4 french to 3 french.

52. A tapered end section for a catheter; wherein the tapered end section has at least one curve.

53. The catheter of claim 52, wherein the tapered end section is formed from a flexible material.

54. The catheter of claim 52, wherein the tapered end section is formed from an elastic material.

55. The catheter of claim 52, wherein the tapered end section is formed from a soft material.

56. The catheter of claim 52, wherein the tapered end section is formed from a germ-retarding material.

57. The catheter of claim 52, wherein the tapered end section is formed from a braided material.

59. The catheter of claim 52, wherein the thickness of the walls of the tapered end section changes along its length.

60. The catheter of claim 52, wherein the length of the tapered end section is at least 0.5 cm.

61. The catheter of claim 52, wherein the length of the tapered end section is variable.

62. The catheter of claim 52, wherein the tapered end section is detachable.

63. The catheter of claim 52, wherein the tapered end section includes attachment

means for removably attaching to a tip of the catheter.

64. The catheter of claim 52, wherein the tapered end section tapers from an inner diameter of 0.035 inches to 0.018 inches, and wherein the outer diameter tapers from 4 french to 3 french.

IX. APPENDIX OF EVIDENCE

None.

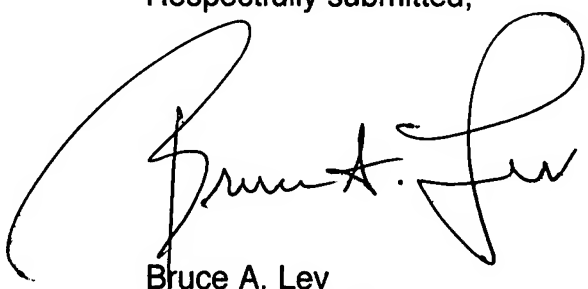
X. APPENDIX OF RELATED PROCEEDINGS

None.

CONCLUSION

It is submitted that the reasons why this rejection should be reversed are simple, clear, and compelling. Reversal of the rejection and allowance of the application is respectfully solicited.

Respectfully submitted,



Date: July 25, 2007

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